IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 109 of 1985

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HIMATLAL C. VALIA

Versus

COMMISIONER OF INCOME-TAX

Appearance:
MR KC PATEL for Petitioner
SERVED BY RPAD - (N) for Respondent No. 1

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE A.R.DAVE

Date of decision: 19/09/2000

ORAL JUDGEMENT

This reference arises at the instance of the assessee under the provisions of Section 256(1) of the

Income Tax Act (hereinafter referred to as the Act) for our opinion. The following 2 questions are required to be answered:-

"1. Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the assessee could be taxed on capital gains in relation to the sale of silver wares during the accounting period in question with special reference to the definition of capital asset?

4. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the statement made by the assessee in the voluntary disclosure could not help him merely because it was his own statement and further that it cannot be said that the same is not binding upon the department?"

2. The short facts necessary to be taken note of are that the assessee holds 790 silver items of dinner sets. The question arises is whether the assessee can be subjected to tax on capital gains. The case of the assessee is that the capital asset sold by him were his `personal effects' and excluded from the definition of `capital asset' by virtue of clause (ii) of Section 2(14) of the Income Tax. The alleged capital gain is exempt from payment of tax. The definition of `capital asset' contained in Section 2(14) as it stood in the relevant assessment year 1977-78, reads as under:-

Sec. 2(14) "capital asset" means property of any kind held by an assessee, whether or not connected with his business or profession, but does not include-

(i) any stock-in-trade, consumable stores or raw materials held for the purposes of his business or profession;

(ii) personal effects, that is to say, movable property (including wearing apparel and furniture, but excluding jewellery) held for personal use by the assessee or any member of his family

dependent on him.

Explanation: For the purposes of this sub-clause, "jewellery" includes -

(a) ornaments made of gold, silver, platinum or any other precious metal or any alloy containing one or more of such precious metals, whether or not containing any precious or semi-precious stone, and whether or not worked or sewn into any wearing apparel;

(b) precious or semi-precious stones, whether or not set in any furniture, utensil or other article or worked or sewn into any wearing apparel;"

3. The Tribunal in its order dated 22.12.1983 which has given rise to this reference has duly taken note of the decision of the Supreme Court in H.H.Maharaja Rana Hemant Singhji Vs. C.I.T., Rajasthan reported in 103 ITR 61, the decision of the High Court of Bombay in the case of Jayantilal A Shah Vs. K.N.Anantharam Aiyar Vs. Commissioner of Income Tax reported in 1985 156 ITR 448 and the decision of the Madhya Pradesh High Court in H.H.Maharani Usha Devi V. CIT (1982) 133 ITR 43. After considering the ratio of the aforesaid cases on the meaning and interpretation of words "personal effects" which are excluded from the definition of `Capital assets' under Section 2(14), the Tribunal came to the conclusion that all the silver items of dinner sets being intended for personal use even though occassionally and not frequently, are `person effects'. On the sale of them no tax by way of capital gain is leviable. Even after holding thus the Tribunal passed an order of remand of the case to the I.T.O. with directions `to ascertain the number of members of the assessee's family who are dependent upon him and allow the deduction of value only of one set each for the assessee and for the said members of the family dependent upon him.' The further direction made is that `in the case of common items i.e. coffee set, assorted utensils and water jug, the items allowable for deduction should be taken in the same proportion as the number of persons (i.e. assessee plus the said members of his family) bears to the total number 48.'

4. Learned Counsel appearing for the assessee brings to our notice the latest decision of the Supreme Court

arising from Madhya Pradesh in the case of C.I.T. Vs. H.H.Maharani Usha Devi reported in 1998 231 ITR Page 79. It is pointed out that the earlier decision of the Supreme Court in the case of H.H.Maharaja Rana Hemant Singhji Vs. CIT (1976) 103 ITR 61 (SC) and Bombay decision in the case of Poddar (G.S.) Vs. CWT (1965) 57 ITR 207 have been considered by the Supreme Court in the case of HH Maharani Usha Devi (Supra). In the case of HH.Maharani Ushadevi, the item under consideration was `heirloom jewellery'. Considering the question of tax on sale of such item as capital gain it was observed:-

> "personal effects" which are excluded from capital assets include jewellery for personal use. Heirloom jewellery is also meant for the personal use of the assessee. It is, however, not meant for daily personal use but for use on ceremonial occasions. This does not deprive such jewellery of its character as jewellery meant for personal use. Heirloom, jewellery may be passed down from generation to generation. But it is nevertheless for the personal use of the owner. The frequency of the use of the property must necessarily depend on the nature of the property. Merely because from the nature of the property, it can be used on ceremonial occasions only, it does not follow that the property is not held by the assessee for personal use. The occasion on which the jewellery is used will depend upon the nature of the jewellery. But if it is meant for the assessee's personal use, it will form part of the assessee's personal effects. In the instant case the jewellery was to be worn on the person of the assessee. It would, in ay event, form a part of the personal effects of the assessee. Since the definition of "capital asset" in section 2(14) does not include personal effects including jewellery, the items of jewellery in question were the personal effects of the assessee held for personal use by her and was therefore excluded from the definition of the term "capital asset". Therefore, the profits and gains arising from the sale of the items of jewellery in question were not assessable to capital gains tax under section 45 of the Act."

From the decision of the Supreme Court quoted above, it is clear that in deciding whether the item in question is a "personal effect" or not, what has to be examined is whether the item is intended for personal use of the assessee. Frequent use of the item depends upon

the nature of the item. In the case of heirloom jewellery, it was held that although it was to be worn only on ceremonies, it was meant for personal use of the assessee.

5. Learned Counsel appearing for the Revenue submitted that here silver items are pieces of so many dinner sets. All of them cannot held to be personal effects of the assessee to treat them as outside the definition of `capital assets'. The submission made is that the Tribunal was justified in remanding the matter to the Assessing Officer to find out as to how many items were required by the family and the dependents of the assessee and to what extent they were in common use. It is submitted that the earlier decision of the Supreme Court in the case of H.H.Maharaja Rana Hemant Singhji reported in 103 ITR 1976 Page 61, on which reliance was placed by the Tribunal, has been approved by the Supreme Court in the case of Maharani Ushadevi.

6. In the case before us, the items which are described in the order of the Tribunal are all different articles to be used on dinner table. There are in all 790 pieces of such dinner sets. The silver wares are articles to be used on the dinner table. They were obviously intended for personal use of the assessee and his family members. Such silver dinner items were not frequently used is a fact totally irrelevant. As held by the Supreme Court in the case of Maharani Ushadevi (Supra), even if the personal effects were occasionally used as and when dinners were arranged for the family and guests, it would nonetheless be the `personal effects' of the assessee. We find no justification for the Tribunal to remand the matter to the Assessing Officer to ascertain the total number of members of the assessee's family and identify those who are dependant upon him to allow deduction in respect of value of only 1 set each for the assessee and the said members of his family. It is difficult to understand why there should be such rationing of personal effects of the assessee for the purpose of giving benefit of the exclusion clause contained in Section 2(14). If the assessee had more than 1 dinner sets which were intended to be used by him and his family members, as and when dinner parties are arranged, there is nothing in the provisions of Section 2(14) to assign such restricted meaning to the words "personal effects" used in clause (ii) of Section 2 (14) of the Income Tax Act. On the facts found by the Tribunal itself, the test applied by the Supreme Court is satisfied. The dinner set items/articles were intended for personal use of the assessee and his family members

and guests.

7. For the aforesaid reasons, we answer question no.1 in favour of the assessee and against the Revenue. The answer of question no.4 is dependent upon the answer to question no.1. The question has arisen because the assessee made a voluntary disclosure of the sale of silver items as sale of his `personal effects.' As we have answered the question no.1 in favour of the assessee, we do not consider it necessary to answer question no.4. This reference is accordingly disposed of with no order as to costs.

(D.M.Dharmadhikari, CJ)

(A.R.Dave, J)

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